THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No.19345 of 2001

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Dated: 17.03.2006

Between:

D. Mahadev, S/o D. Venkatappa, Conductor, E. 111223, resident of 5-111, New Bus Stand Road, Ieeja, Mahaboobnagar District.

..... PETITIONER

AND

The Labour Court-I, Hyderabad, rep. by its Presiding Officer, Chandravihar Building, 4th Floor, M.J. Road, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.19345 of 2001

Order:

This writ petition is filed seeking to quash the award passed by respondent No.1-Labour Court-I, Hyderabad, in I.D. No. 116 of 1999, dated 27.09.2000 in so far as denying the back wages and continuity of service for all purposes.

The petitioner was appointed as Conductor in respondent No.2-A.P.S.R.T.C. in 1985. On 04.11.1996, while he was conducting the bus service on the route leeja to Kothapalli, a check was exercised, and for certain cash and ticket irregularities, he was issued a charge memo. Thereupon, a charge sheet was issued to the petitioner on 12.11.1996. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 15.04.1997 calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 06.05.1997, the respondent-Corporation ordered his removal. Against the order of removal, the petitioner filed an appeal before the Deputy Chief Traffic Manager, A.P.S.R.T.C., Mahaboobnagar, which was dismissed by order dated 20.06.1997. Thereafter, the petitioner raised

industrial dispute in I.D. No. 116 of 1999 and the Labour Court, vide the award impugned in the writ petition, set aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service with starting pay and also further directed that the total service of the petitioner shall be counted only for the purpose of terminal benefits and the petitioner is not entitled for any back wages. Assailing the award of the Labour Court in so far as denying the back wages and continuity of service for all purposes, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The learned counsel for the petitioner submitted that on the date of check as the bus was running late by two hours it was over-loaded than its normal capacity, and the passengers exerted pressure on the petitioner as well as on the service driver to start the bus, and so the driver started the bus and when the checking officials entered into the bus the petitioner was in the act of issuing tickets. He submits that the checking officials have not recorded the statements of passengers in the presence of petitioner. He further submits that the checking officials, who examined before the Enquiry Officer, clearly admitted that the bus was over loaded than its normal capacity and the petitioner was in the act of issuing tickets when they entered into the bus and the petitioner issued 42 tickets of various denominations to the passengers who boarded the bus at stage No.8. In the enquiry, except the petitioner and the Checking Officials no passenger was examined and there is no supporting evidence to establish the charges leveled against the petitioner, as such, the enquiry stood vitiated. He submitted that the petitioner has not misappropriated any amounts, much less the ticket amounts, and the award of the Labour Court in so far as denying the back wages and continuity of service for all purposes is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court and allow the writ petition.

The respondent-Corporation filed counter. Reiterating the counter averments, the learned Standing Counsel for the respondent-Corporation contended that the petitioner has unclean service record, and this is evident from the fact that he suffered punishment as many as 19 times for committing the cash and ticket irregularities, and he was suspended twice. He submitted that the petitioner failed to observe the rule “issue and start” and failed to issue tickets and collect fare from the passengers and indulged in tampering of the S.R., and therefore, his plea that he did

not misappropriate any amount, is incorrect. He submitted that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct of misappropriation, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and taking into consideration the past service and age of the petitioner and to give one more chance to him not to involve in such irregularities in future, modified the punishment and directed the respondent-Corporation to reinstate the petitioner into service as Conductor with starting pay, but denied the back-wages and continuity of service for all purposes, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai,** the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted with five charges i.e., (1) for having failed to observe the rule “issue and start”, (2) for having failed to collect the fare and issue tickets to three individual passengers, (3) for having failed to issue tickets to 20 individual passengers in spite of collecting the requisite fare of Rs.2.50 ps., each from them, (4) for having failed to issue ticket to a passenger in spite of collecting the requisite fare of Rs.3.50 ps., and (5) for having failed to close the tray numbers. In the departmental enquiry, the Enquiry Officer, on consideration of the evidence of the Checking Officials, and statements of the petitioner and passengers, who were traveling in the bus on the date of incident, found that the petitioner by means of ticket irregularities has not accounted for an amount of Rs.54.50 ps., and top punch tickets Ex.M6 were issued to make good the said amount and accordingly held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-

appreciation of the entire material on record, observed that the punishment of removal of the petitioner from service is too harsh, and in order to give one more opportunity to the petitioner, directed the Corporation to reinstate the petitioner into service as a fresh candidate without back wages and without continuity of service, but his total service shall be counted only for the purpose of terminal benefits. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded continuity of service and back wages, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered fresh appointment.

The award of the Labour Court judged from the parameters of certiorari jurisdiction of this Court under Article 226 of the Constitution of India, does not call for interference, for the petitioner failed to point out any of infirmities.

The writ petition is devoid of merit and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 17.03.2006

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